

Remarks

Claims 1-56 are pending in the subject application. Applicants acknowledge that claims 7-9, 21-23, 37-39, and 47-56 have been withdrawn from further consideration as being drawn to a non-elected invention. By this Amendment, Applicants have canceled claims 2, 4, 7-13, 16, 18, 21-26, 32, 34, 37-42, and 47-56, amended claims 1, 3, 14, 15, 19, 31, 33, and 35, and added new claims 57-65. Support for the new claims and amendments can be found throughout the subject specification and in the claims as originally filed. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 1, 3, 5, 6, 14, 15, 17, 19, 20, 27-31, 33, 35, 36, 43-46, and 57-65 are currently before the Examiner. Favorable consideration of the pending claims is respectfully requested.

Claims 1-6, 10, 14-20, 24, 27-36, 40, and 43-46 are rejected under 35 USC §102(e) as anticipated by Meyerowitz *et al.* (U.S. Patent No. 6,294,716). Claims 1-6, 10-20, 24-36, and 40-46 are also rejected under 35 USC 103(a) as obvious over Meyerowitz *et al.* (U.S. Patent No. 6,294,716) in view of Hudspeth *et al.* (1996). The Examiner asserts that Meyerowitz *et al.* teach a polynucleotide having the sequence in SEQ ID NO: 2 that encodes an *etr1* ethylene response polypeptide (SEQ ID NO: 3) from *Arabidopsis*. The Meyerowitz *et al.* patent is also cited as teaching methods of modulating the response of plant tissue to ethylene in plants transformed with the polynucleotide. The Hudspeth *et al.* reference is cited as teaching isolated promoter sequences from cotton chitinase genes that comprise a functional fragment of the polynucleotide sequence shown in SEQ ID NO: 8. The Examiner asserts that it would have been obvious for an ordinarily skilled artisan to modify the invention of the Meyerowitz *et al.* patent to include a functional fragment of a chitinase promoter from cotton as taught by Hudspeth *et al.* Applicants respectfully traverse these grounds of rejection.

Applicants respectfully assert that the cited references, whether taken alone or in combination, do not teach or suggest Applicants' claimed invention. The Meyerowitz *et al.* patent does not teach or suggest the mutant *etr 1* protein sequences of claims 4, 5, 18, 19, 34, and 35 or the protein sequences of new claims 57-65. As the Examiner acknowledges in the Office Action, the Meyerowitz *et al.* patent discloses an *etr1* protein sequence that has a cysteine amino acid at position 65 whereas the sequences in SEQ ID NOs: 1-4 all have a tyrosine amino acid at position 65. In

addition, SEQ ID NO: 2 has a tyrosine at position 102, SEQ ID NO: 3 has a valine at position 31, and SEQ ID NO: 4 has a phenylalanine at position 62. Thus, the Meyerowitz *et al.* patent does not teach or suggest the mutant *etr1* protein sequences of Applicants' claimed invention. Nor does the Meyerowitz *et al.* patent teach or suggest the nucleotide sequences of SEQ ID NO: 5 of claims 6, 20, and 36. Accordingly, Applicants respectfully assert that the Meyerowitz *et al.* patent does not anticipate or render obvious those claims that recite any of SEQ ID NOs: 1-5. However, in order to expedite prosecution of the subject application to allowance, Applicants have amended claim 1 to incorporate the elements of claim 11, *i.e.*, to recite that the regulatory sequence comprises the nucleotide sequence of SEQ ID NO: 8. Applicants note that claim 11 is not included under the §102 rejection. Thus, the §102 rejection is moot in view of the amendments presented herein.

In regard to the §103 rejection, Applicants respectfully assert that the cited references do not teach or suggest Applicants' claimed invention. Applicants incorporate herein their remarks directed to the Meyerowitz *et al.* patent and the rejection under 35 USC §102(e). As noted above, Applicants have amended claims 1, 14, 15, and 31 to recite that the regulatory sequence comprises the nucleotide sequence of SEQ ID NO:8. The Hudspeth *et al.* reference does not teach or suggest SEQ ID NO: 8.

As the Examiner is aware, it is well established in patent law that in order to support a *prima facie* case of obviousness, a person of ordinary skill in the art must find both the suggestion of the claimed invention, and a reasonable expectation of success in making that invention, solely in light of the teachings of the prior art. *In re Dow Chemical Co.*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). The cited references do not teach or suggest Applicants' claimed invention, nor do they provide the required reasonable expectation of success in arriving at Applicants' invention. Accordingly, reconsideration and withdrawal of the rejections under 35 USC §102(e) and 35 USC §103(a) is respectfully requested.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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